

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) **Notice of Motion for Relief**
) **from Automatic Stay in a**
 Debtor(s)) **Chapter 11/12 Case,**
) **and Notice of Hearing Thereon**

YOU ARE NOTIFIED THAT:

1. A motion was filed by _____ for relief from the automatic stay protecting the debtor(s) and debtor's property, as provided by 11 U.S.C. § 362.
2. The name and address of the moving party's attorney (or moving party, if no attorney) are:
3. If you wish to resist the motion you must, within 14 days of the service date shown below, file a written response with the clerk at 1050 SW 6th Ave. #700, Portland OR 97204 or 405 E 8th Ave. #2600, Eugene OR 97401. If the response is served in paper, you must also file a certificate showing the response has been served on the moving party's attorney.
4. A response must state the facts upon which relief from the automatic stay is resisted. See [Local Bankruptcy Form \(LBF\) 720.50, Procedures re: Relief from Stay](#), for details.
5. If you file a timely response, a hearing on the motion will be held as follows:

Date: _____

Time: _____

Location: Courtroom # _____, _____

Telephone Hearing [**NOTE:** See [LBF 888](#), Telephone Hearing Requirements]

Call-In Number: (888) 684-8852

Access Code: 5870400 for Judge David W. Hercher (dwh)
1238244 for Judge Peter C. McKittrick (pcm)
4950985 for Judge Teresa H. Pearson (thp)
3388495 for Judge Thomas M. Renn (tmr)
Other _____

No testimony will be taken at the hearing. If no timely response is filed, the hearing may be cancelled. Parties are encouraged to check the hearing calendar at <https://www.orb.uscourts.gov> after the response deadline has passed.

6. If a timely response is not filed, then either:

- a. The court may sign an order without further notice, submitted by the moving party, granting relief from the stay; or
- b. The stay will expire under the terms of 11 U.S.C. § 362(e).

I certify that on _____ (1) this notice, (2) [LBF 720.50](#) if this notice was served on paper, (3) [LBF 888](#) if this notice was served on paper and a telephone hearing will be held, and (4) the motion, were served pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 4001 and FRBP 7004 on the debtor(s), U.S. Trustee, trustee, members of any committee appointed pursuant to 11 U.S.C. § 1102 or its authorized agent [or, if no committee, on all creditors included on the list filed pursuant to FRBP 1007(d)], and their respective attorneys.

Signature of Moving Party or Attorney

Travis W. Hall, OSB No. 984513
thall@batemanseidel.com
Bateman Seidel PC
1000 SW Broadway, Suite 1910
Portland, OR 97205
D: 503-972-9905
F: 503-972-9920

Attorney for Creditor Bateman Seidel

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:)	Case Nos.
)	19-31883-dwh11 (Lead Case)
15005 NW Cornell LLC and)	19-31886-dwh11
)	
Vahan M. Dinihanian, Jr.)	MOTION FOR LIMITED RELIEF
)	FROM STAY OF CREDITOR
Debtor(s).)	BATEMAN SEIDEL PC
)	
)	
)	
)	
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)	
)	

Creditor Bateman Seidel respectfully submits this Motion for Limited Relief from Stay to Record Notice of Lien against the Real Property Ownership Interest Of 15005 NW Cornell LLC in the Land Records of Washington County, Oregon. Bateman Seidel PC files this motion pursuant to 11 U.S.C. §362(d) and Bankruptcy Rules 4001(a) and 9014, and moves the court for an order granting limited relief from the automatic stay to permit Bateman Seidel to complete the statutorily required Notice Of Claim under ORS 87.445 and

87.460-470 against the tenant in common real property ownership of 15005 NW Cornell LLC in the Cornell Road Property or Farm.

SUPPORTING FACTS AND LEGAL ARGUMENT FOR RELIEF FROM STAY

This court in its December 13, 2021, Memorandum Decision on Objections to Bateman Seidel Claims and Adversary Proceedings 20-03077 and 20-03079 found that Creditor has an implied in fact contract with 15005 NW Cornell LLC and is owed under Claim 1 the amount of \$182,231.78 pursuant to its attorney's lien in and against the Washington County Circuit Court partition action. (Doc.# 508, pp4-6, 15-17.)

This court found that Claim 1 in the amount of \$182,231.78 is fully secured as an attorney's lien against the partition action and its subject matter, the tenant in common real property ownership interest of 15005 NW Cornell LLC in the Cornell Road Property.

This court also found that the lien attaches "to the eventual proceeds of the partition litigation, which will be either the portion of the Farm allocated to it [15005 NW Cornell] or its share of the proceeds of sale of the Farm". (Doc. # 508, p. 16.)

Lastly, this court held that "The fair market, rather than the distressed sale, value of the portion of land that or proceeds that 16005 will receive undisputedly suffices to secure Bateman's attorney lien, as well as Teherani-Ami's senior trust deed interest." (Doc. # 508, p. 16.)

ORS 87.445 provides that "An attorney has a lien upon actions, suits and proceedings after commencement thereof, and judgments, orders and awards entered therein in the client's favor and the proceeds thereof...". Thus, the attorney's lien of Creditor arose automatically on April 27, 2018 when the partition complaint was filed and relates back to that date. *See, Potter v. Schlessner* 335 Or. 209, 213 (2003).

In *Potter*, the Oregon Supreme Court said, "The lien is a charge on the action, and the parties to the action cannot extinguish or affect the attorney's lien by any means... other than by satisfying the underlying claim of the attorney for the fees incurred in connection with the

action.” *Potter*, 335 Or. at 214. Ms. Teherani- Ami was a party defendant to the partition action and his argued in this case that Creditor has a secured attorney’s lien in the partition action.

ORS 87.480 specifically states that attorneys “have the same right and power over actions, suits, proceedings, judgments, orders and awards to enforce their liens as their clients have for the amount due thereon to them.”

ORS 87.460(1) requires the filing of a notice of claim of lien by the attorney “with the recording officer of the county in which the real property... is situated”. In *Jones v. Bhattacharyya*, 305 Or. App. 503 (2020), the Oregon Court of Appeals recently made clear that the notice of claim of lien must be filed as required by the statute in order to claim the right to enforce the lien. *Jones*, 305 Or. at 511-513. The court said that the attorney’s possession of a lien which attaches from the beginning of the action is different from the attorney’s right to claim or enforce the lien. *Id.* at 511-512.

The notice of claim of lien required by ORS 87.460(1) is set forth in ORS 87.470. This verified statement in writing is attached hereto as Exhibit 1. It will be recorded in the land records of Washington County against the tenant in common real property ownership interest of 15095 NW Cornell LLC as soon as the court grants limited relief from stay to Creditor.

Thus, Creditor must record the attorney’s lien against the tenant in common ownership interest of 15005 Cornell LLC in the Cornell Road Property immediately in order to enforce its attorney’s lien. ORS 87.465 states that if the notice of claim of lien is not timely filed, the lien is lost. Creditor has the attorney’s lien as this court has now ruled and it is secured by the interest of 15005 NW Cornell in the Farm or the proceeds of any sale of that interest.

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The court for good cause should grant the limited relief from stay for Creditor to file the notice of claim of lien against the tenant in common real property ownership of 15005 in the recording office of the land records of Washington County so the attorney's lien can be enforced and remain secured against the partition action and the real property involved in it or the proceeds from any sale.

CONCLUSION

Creditor Bateman Seidel PC prays for the entry of an order granting relief from the automatic stay to permit Creditor to record the notice of claim of attorney's lien against the tenant in common real property ownership of 15005 NW Cornell LLC in the Cornell Road Property or the proceeds from any sale of that interest

DATED THIS 29TH DAY OF DECEMBER, 2021.

BATEMAN SEIDEL MINER BLOMGREN CHELLIS
& GRAM, P.C.

/s/ Travis W. Hall
Travis W. Hall. OSB No. 984513

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a copy of the foregoing **MOTION FOR LIMITED RELIEF FROM STAY OF CREDITOR BATEMAN SEIDEL PC** was filed with the court electronically via <https://oregon.tylerhost.net/ofswweb>. Notice of this filing will be sent by e-mail to all parties participating in the ECF-filing system by operation of the Court's electronic filing system as noted below:

Bruce H. Orr
Wyse Kadish LLP
900 SW 5th Ave
Suite 2000
Portland, Oregon 97204

Douglas R. Pahl
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, Oregon 97209-4128

Nicholas J. Henderson
Motschenbacher & Blattner, LLP
811 SW Taylor Street, Suite 300
Portland, Oregon 97204-3029

Stephen Arnot
U.S. Trustee, Portland
620 Main Street #213
Portland, Oregon 97205

DATED THIS 29TH DAY OF DECEMBER 2021.

BATEMAN SEIDEL MINER BLOMGREN CHELLIS
& GRAM, P.C.

/s/ Travis W. Hall
Travis W. Hall, OSB No. 984513

Exhibit 1
(Notice of Lien)

NOTICE OF CLAIM OF LIEN UNDER ORS 87.445, 87.460 AND 87.470 BY CREDITOR
BATEMAN SEIDEL PC FO ITS ATTORNEY'S LIEN

THIS IS A VERIFIED STATEMENT UNDER OATH OF THE NOTICE OF CLAIM OF
ATTORNEY'S LIEN BY CREDITOR BATEMAN SEIDEL PC AS TO THE
FOLLOWING FACTS:

1. Creditor has a secured attorney's lien as found by the US Bankruptcy Court for the District of Oregon in the amount of \$182,231.78 for the fees and costs for legal services performed by Creditor in the partition action in Washington County Circuit Court, Case Number 18CV-1705, representing 15005 NW Cornell LLC.
2. The Bankruptcy Court case with the court awarded attorney's lien is case 19-31883-dwh11 and the Memorandum Decision of December 13, 2021, contains the attorney lien claim award.
3. The Washington County Circuit Court case containing the partition litigation is No. 18CV17059.
4. The amount due to Bateman Seidel PC as Creditor under the attorney's lien is a true and bona fide existing debt as of the date of the filing of this notice of claim of lien. This amount is \$182,231.78.
5. This amount was due in full to Bateman Seidel PC for its legal services as the unpaid legal fees and costs not later than May 2019.
6. The tenant in common real property ownership interest of 15005 NW Cornell LLC in the Cornell Road Property or Farm is the property interest involved in the partition action against which the attorney's lien attached since April 27, 2019. The legal description of the entire Cornell Road Property or Farm in which 15005 NW Cornell LLC has a tenant in common real property ownership interest is attached hereto as Exhibit A.
7. This real property described in Exhibit A, as to the particular ownership interest or sale proceeds to be allocated to 15005 NW Cornell LLC, is the property against which this notice of claim attached and is now to be enforced by Creditor Bateman Seidel PC.
8. For clarification and avoidance of doubt, the ownership interest in and the real property to be allocated to 15005 NW Cornell LLC by the partition action, or otherwise, or the proceeds from any sale of the ownership allocated to 15005 NW Cornell LLC, is the only property interest or sale proceeds to which the attorney's lien of Creditor Bateman Seidel attached and which is now being enforced by this notice of claim of lien. No other tenant in common real

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9905
Facsimile: (503) 972-9921

property ownership interest in the Cornell Road Property or Farm is attached or enforced by this notice of claim of lien of Bateman Seidel other than that of 15005 NW Cornell LLC.

IN WITNESS WHEREOF, this Notice of Claim of Lien is executed as of the ____ day of _____, 2022.

**BATEMAN SEIDEL MINER BLOMGREN
CHELLIS & GRAM, P.C.:**

By: _____
Name: Travis W. Hall
Title: Shareholder

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on _____, 20__, by
_____, _____ of
_____, a _____, on behalf of said
_____.

Notary Public, State of _____
Printed Name: _____
My Commission Expires: _____

EXHIBIT A
(Legal Description)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF Washington, STATE OF OR, AND IS DESCRIBED AS FOLLOWS:

AN UNDIVIDED 50% INTEREST IN THE FOLLOWING DESCRIBED PROPERTY:

PARCEL I:

A tract of land located in the Southeast one-quarter of Section 29 and the Northeast one-quarter of Section 32, Section 29, Township 1 North, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, being more particularly described as follows:

Beginning at a point in the center of the County Road 1162.85 feet West and 869.11 feet South of the Northeast corner of said Section 32; thence North 1485.4 feet; thence East 182.85 feet; thence South 655 feet; thence Easterly 661.8 feet; thence South 1100 feet to the center of the County Road; thence Northwesterly, along the center of the County Road, 173.5 feet; thence Northwesterly, along the center of the County Road, 240 feet; thence Northwesterly, along said County Road, 551.35 feet to the point of beginning.

TOGETHER WITH that portion of the vacated County Road which inured thereto by Resolution and Order No. 95-35, recorded April 13, 1995 as Fee No. 95025673.

ALSO TOGETHER WITH that portion described in Bargain and Sale Deed recorded April 13, 1995 as Fee No. 95025675.

EXCEPTING THEREFROM that portion dedicated for right of way purposes by Dedication Deed recorded August 29, 1994 as Fee No. 94079706.

ALSO EXCEPTING THEREFROM that portion conveyed to Washington County by Quitclaim Deed recorded April 13, 1995 as Fee No. 95025674.

FURTHER EXCEPTING THEREFROM any portion lying within the boundaries of NW Cornell Road.

PARCEL II:

A tract of land located in the Southeast one-quarter of Section 29 and the Northeast one-quarter of Section 32, Section 29, Township 1 North, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, being more particularly described as follows:

Beginning in the center of the County Road, 1748.41 feet West and 875.55 feet South of the Northeast corner of said Section 32; thence North 1490.7 feet; thence Easterly 585.56 feet;

thence South 1485.4 feet to the center of the County Road; thence Westerly, along the center of the County Road 585.56 feet to the point of beginning.

EXCEPTING THEREFROM that portion dedicated for right of way purposes by Dedication Deed recorded August 29, 1994 as Fee No. 94079706.

FURTHER EXCEPTING THEREFROM that portion acquired by State of Oregon, by and through its Department of Transportation in Stipulated Final Judgment of Washington County Case No. C90-0308CV, being recorded February 22, 1996 as Fee No. 96015341 and further relinquished to Washington County, a political subdivision of the State of Oregon, by and through its Elected Officials in Relinquishment Deed recorded October 15, 2009 as Fee No. 2009-091411.

AND FURTHER EXCEPTING THEREFROM any portion lying within the boundaries of NW Cornell Road.

PARCEL III:

A tract of land located in the Southeast one-quarter of Section 29 and the Northeast one-quarter of Section 32, Section 29, Township 1 North, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, being more particularly described as follows:

All that portion of the following described tract lying West of the West line of the Bonneville Transmission Line right-of-way:

Beginning at the common corner of Sections 28, 29, 32 and 33 in Township 1 North, Range 1 West of the Willamette Meridian; thence West 318.2 feet; thence South 1100 feet to the center of the County Road; thence Southeasterly, along the center of the County Road, 426.5 feet; thence Easterly 375.5 feet to a point 10 feet West of and 4 feet North of the intersection of the County Roads; thence North on County Road 1350 feet; thence West 422.5 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying within the boundaries of NW Cornell Road.